IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 20241-CII of 2006
and C.R.No. 5802 of 2003
Date of decision : 7.12.2006.

The Municipal Council, Phagwara

.....Petitioner.

Versus

Satish Kumar

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.R.K. Sharma,Advocate
for the petitioner.

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VINOD K. SHARMA,J.(ORAL)

Present revision petition has been filed against the orders vide which the learned Courts below have dismissed the application moved by the petitioner under Order 9 Rule 13 C.P.C. by holding the same to be time barred.

It is not in dispute that against the ex parte judgment and decree an appeal was filed, which was dismissed. Thereafter the petitioner approached this Court by way of regular second appeal. The said appeal was also dismissed. Once the appeal filed against an ex parte decree the application under Order 9 Rule 13 C.P.C. was not competent.

The learned counsel for the petitioner contends that in R.S.A., this Court was pleased to observe that the appellant would be at liberty to take steps in accordance with law including filing of an application for setting aside the ex parte decree. It was also observed that keeping in view the fact that the time has been taken by the appellant in pursuing the case in

the wrong form, if an application is filed by the appellant for condonation of delay the same be dealt with in accordance with law. The reading of the order passed by this Court shows that the petitioner was permitted to take steps in accordance with the law. Once the law does not permit the filing of application under Order 9 Rule 13 C.P.C., the order of this Court cannot be read that the petitioner allowed to avail this remedy.

Accordingly, this revision petition has no merit.

Dismissed.

7.12.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**